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7-1800-112-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Family Foster
Home License of Georgina and Stanley
Van Every

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis on December 18, 19, and 20, 1985, at the Office of Administrative Hearings in Minneapolis. The record in this matter closed on July 3, 1986.

Gary A. Davis, Assistant Ramsey County Attorney, and Nancy Nager, Certified Student Attorney, Ramsey County Attorney's Office, Suite 400, 350 St. Peter Street, St. Paul, Minnesota 55101, appeared on behalf of the Ramsey County Community Human Services Department ("Agency" or "County"). Mark W. Gehan, Jr., Collins, Buckley, Sauntry and Haugh, Attorneys at Law, W-1100 First National Bank Building, St. Paul, Minnesota 55101, appeared on behalf of Georgina and Stanley Van Every ("Licensees" or "Respondents").

Notice is hereby given that, pursuant to Minn. Stat. 14.61 the final decision of the Commissioner of Human Services shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Leonard W. Levine, Commissioner, Department of Human Services, 4th Floor, Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota 55155.

STATEMENT OF ISSUE

The issue in this matter is whether disciplinary action should be taken against the Family Foster Home license of Georgina and Stanley Van Every because of an alleged act of child molesting by Licensee Stanley Van Every on July 4, 1985, in violation of Minn. Rule 9545.0900A.(1).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Georgina and Stanley Van Every have been licensed as foster parents since 1981. They have been married for 13 years and have two children of their own, ages 11 and 2.

2. On July 14, 1985, the Van Everys lived in a house at 528 Como Avenue, St. Paul. In addition to themselves and their two children, L.S., a 13-year old foster child, lived in the household at that time. L.S., who lived with the Van Everys for four years, is the eighth foster child to have lived with the Licensees. She was removed from the Van Every household by the County in late August, 1985. No foster children had been placed with them since.

3. On July 4, 1985, the Van Everys hosted the extended family of Erv and Elaine Weiler, who are foster parents living in St. Paul Park. The families are acquainted because Mrs. Van Every is a former employee of Mr. Weiler's business and because of mutual interests and concerns such as foster parenting. The two couples are friends of each other.

4. The purpose of the July 4 gathering at the Van Every's was for the families to celebrate the holiday by attending the Taste of Minnesota Festival (held at the State Capitol grounds, which are located two miles southeast of the Van Every home), followed by a cook-out supper. The families planned to end the party after the finish of the Taste of Minnesota's fireworks display, which can be seen from the area of the Van Every's garage.

5. Approximately 12 people attended the festivities at the Van Every's after the families left the Taste of Minnesota Festival and returned for the party and fireworks. In addition to the couples, both Van Every children and L.S. were there, as well as several natural and foster children of the Weilers. The party lasted for several hours, from early evening until shortly after 11:00 p.m.

6. The Van Every house at 528 Como Avenue is at the southeast end of a large "triangle" block formed by Dale Street (which runs north and south), Topping Street (which runs east and west) and Como Avenue (a diagonal street running northeast to southwest between Dale and Topping). The lot at 528 Como is close enough to the "V-shaped" intersection of Como and Topping that it fronts on Como and backs out on Topping. It is from the back of the yard, on Topping, that the families planned to view the fireworks.

Across Como on Topping, a railroad spur track crosses the street about 150 feet from the Como intersection. There is a small parking area near a warehouse next to the track. Another track crosses Topping a few hundred feet northeast of the first track. The area in between the tracks is occupied by warehouses and small manufacturing operations.

7. There were no alcoholic beverages served, and no drugs were-consumed,
at-the party hosted by the Licensees on July 4, 1985.

8. Prior to the scheduled start of the fireworks show, three of the adolescent children in the group decided to get away from the rest and obtain a better view of the show than would be available at 528 Como. They walked on Topping from the Van Every's to a bridge on Dale Street, immediately south of Topping, which bridge arches over a large rail yard and affords a clear view of the State Capitol. There was already a large amount of traffic on Como Avenue and Dale Street, from cars leaving the Taste of Minnesota vicinity.

9. Sometime after the children left for the Dale Street bridge, the persons remaining at 528 Como heard a radio announcement that the Taste of Minnesota Festival had been cancelled due to wet weather (it had rained

intermittently throughout the evening). Upon hearing this announcement, Erv Weiler and Mr. Van Every decided to look for the children, Weiler on foot and Van Every by car.

10. Mr. Weiler walked down Topping to Dale Street (in the same direction the children had gone) a distance of several hundred feet, turned left (south) on the sidewalk going over the bridge and, within a few seconds of heading south, saw the children coming toward him down the bridge. He motioned for the children to join him, turned around, and walked back the way he had come.

11. Within a matter of seconds after Erv Weiler set out on foot to find the other children, Mr. Van Every got into one of his cars, a 1981 Ford Granada, which was in the driveway on Topping next to his garage, to join the search for the children. At that point, T.B., a (then) 15-year old (born February 18, 1970) foster daughter of the Weilers, announced, "I'm going" and entered Mr. Van Every's car.

12. Stanley Van Every, with T.B. in the front passenger's seat, drove his car in search of the children around the "triangle" block described in Finding 6 in a direction opposite that taken on foot by Erv Weiler. They drove east on Topping to Como, a distance of two lots, northwest (after a left turn) on Como to Dale, a distance of several hundred feet, south on Dale to Topping (after another left turn), a distance of several hundred feet, and east on Topping (after a third left turn) in the direction of the Van Every back yard. The drive was performed in a relatively slow fashion because of the traffic on Como Avenue (a main road to and from the Taste of Minnesota area) and because the purpose of the drive was to look for people. The Como-Dale intersection is also a junction with Front Street, and the three streets form six "V" corners controlled by semaphore lights.

Mr. Van Every and T.B. did not divert in any way from the route described in the preceding paragraph. They did not stay on Topping, past Como, to enter the area described in the second paragraph of Finding 6.

13. Approximately halfway between the Dale-Topping intersection and the Van Every yard (about 100 yards from Dale Street), Mr. Van Every and T.B. caught up with Mr. Weiler and the three children, who, by that time, had caught up with Mr. Weiler. At that point, approximately five minutes had passed since Mr. Weiler had left the Van Every's to look for the children.

14. During the course of drivin g around the large "triangle" block with T.B., Mr. Van Every made no physical advances toward the young woman. He did not kiss her or touch her, or her clothing, with any part of his body.

15. After returning home to St. Paul Park later in evening of July 4-5, T.B. told B.R., another foster daughter of the Weilers who is five months older than T.B., that "Tony" (Stanley Van Every's nickname) had pulled over during the course of the drive earlier that night, had kissed her, and put his hands "up her shirt". B.R. was asked by T.B. to keep silent about the situation, which B.R. did.

16. On July 5, 1985, T.B. attended a scheduled out-patient therapy session at the Adolescent Treatment Unit of United Hospitals of St. Paul, where she had been treating on a daily basis for over two years. At the July 5 session, she reported to therapist Bill Merchant that she had been touched

on the breasts by a friend of her foster parents. She also reported to Merchant that the man had tried to touch her leg. She did not identify the man. Merchant did not testify that he believed T.B.

17. On July 8, 1985, again during a scheduled therapy session at United Hospitals, T.B. reported to Paula Doll (T.B.'s primary therapist who was not at work on July 5) about the events of July 4. Ms. Doll had been informed in advance by Bill Merchant of T.B.'s report to him, as described in Finding 15. In addition to what she had told Merchant, T.B. told Doll that she and the man had gone out earlier on July 4 to a quick store in the neighborhood, during which trip he had put his arms around her and touched and hugged her several times.

T.B. did not testify that physical advances had been made toward her on the first trip. T.B. then told Doll that, on the second ride-with the man, she had been kissed, her breasts had been fondled and she had stopped an attempt by the man to move his hand to her vaginal area. Ms. Doll believes that T.B. is being truthful in telling about the sexual advances on the second ride. If there was any physical touching of T.B. by Mr. Van Every on the first trip, Doll believes it to be non-sexual.

18. On July 19, 1985, T.B. told Sergeant Don McGlothlin of the Washington County Sheriff's Department of the alleged sexual advance made upon her on July 4. On that same day, prior to informing Sergeant McGlothlin, she also told Elaine Weiler her version of the incident. This was the first time, since her conversation with B.R. on July 4-5, that T.B. had revealed to anyone the name of the accused perpetrator. She told McGlothlin that Van Every had kissed her, had fondled her breasts over her clothing and moved his hands toward (but did not reach) her vaginal area. She informed McGlothlin that the incident took place along the side of the road, (possibly a dirt road) near some railroad tracks. McGlothlin did not testify that he believed T.B.

At the time T.B. had her interview with McGlothlin, she was preparing to move from the Weiler home to the home of her natural father in Cannon Falls. She moved to Cannon Falls on or about July 24, 1985.

19. During the week following T.B.'s report to Sergeant McGlothlin and her foster mother, Mrs. Weiler informed Erv Weiler, who in turn informed Mr. Van Every of the allegations made against him by T.B. Mr. Van Every did not inform his wife of the allegations. Mrs. Van Every did not learn of the allegations against her husband until August 8, 1985, when she was informed of them by Terry Reyes, a social worker employed by the Ramsey County Child Abuse Intake Unit, who had conducted his own investigation into the case. Mr. Van Every did not report the allegations to his wife because he perceived that she was under a great deal of stress at that time.

20. During July of 1985, Mrs. Van Every was under stress because she had recently lost two close friends (one died and the other moved to New Mexico), the couple were waiting for approval of a loan -application to buy a new house, and she was preparing to deliver five 90-minute lectures for a Chemical Dependency course at the University of Minnesota.

21. The Licensees are American Indians. Mr. Van Every, a member of the Cayuga-Mohawk Tribe who grew up in New York and Ontario, is a recovered alcoholic who has not consumed alcohol for 13 years. He believes in the Indian folk belief that it is improper for a man to have sexual contact with a woman during her "time of the moon" (while she is menstruating).

22. During the course of the evening at the Van Every's, T.B. asked Elaine Weiler whether she, or anyone else in the house, had a tampon (a product used to absorb menstrual bleeding). Mrs. Weiler, in turn, asked the question to Mrs. Van Every and Mr. Van Every overheard the question.

23. T.B. told Paula Doll that she had driven to the store with Mr. Van Every prior to going out around the block and looking for the children, which occurred, according to her, on a second drive.

At the hearing, T.B. testified that the first drive was in a small car with bucket seats. The Van Everys, in addition to the Ford Granada, owned a Volkswagen automobile on July 4, 1985. The Volkswagen was not driveable on that date because of defective breaks. Therefore, the Ford Granada (a full-sized car) was the only vehicle Van Every had available to him on July 4, 1985.

24. From time-to-time during the course of the evening, persons at the party made trips to a "Speedy Mart" quick store at the three-street intersection of Como, Dale and Front to buy a variety of items (cigarettes, candy, meat, extra buns). T.B. did walk to the store on at least one such occasion on July 4, but she did not go to the store with Stanley Van Every.

25. Dr. Bart Main is the Medical Director of Child Psychiatry at Children's Hospital in St. Paul and also directs the treatment program at United Hospitals. In connection with T.B.'s report of a sexual advance by Mr. Van Every, Dr. Main met with T.B. sometime during the week of July 8 to discuss the alleged incident (with a view to designing a treatment program, if necessary). Paula Doll and Bill Merchant were also present. Main believes that T.B. was truthful in her report of the sexual advances because she related the events in a consistent manner, her story was realistic and her

emotions, as she related the incident, were consistent with a truthful report.

26. Dr. Main has been T.B.'s treating physician since she entered the Adolescent Day Treatment program at United in December of 1983. He believes T.B. to be a manipulative person, sexually experienced, and that, at times, she lies. Main acknowledges that T.B. could have lied to him in relating the events of July 4, 1985.

27. While at the Van Every home on July 4, T.B. came up behind Erv Weiler, her foster father, put her hands in front of his eyes and said "Guess who?". While performing this act, the girl put her body against the back of Mr. Weiler's head and upper body.

28. During the course of her time as T.B.'s therapist, Paula Doll has observed that T.B. has, at times, been untruthful. T.B. also seeks the attention of older men.

29. Relations were strained between T.B. and the Weilers before the girl left the Weiler home on July 24, 1985. On July 9, 1985, Elaine Weiler confronted T.B. about making flirtatious advances toward Erv Weiler. Prior to that, Mrs. Weiler had noticed that T.B. was physically attracted to, and would flirt with older men. In addition, Mrs. Weiler once confronted T.B. with a discrepancy between the account of an incident that T.B. had told Mrs. Weiler and T.B.'s recollection of the event in her diary. T.B. did not deny the version as recorded in the diary (which story differed from the one she had told Mrs. Weiler), so Mrs. Weiler concluded that T.B. had been lying. I .

30. While staying with the Weilers and attending the Adult Day Treatment Program at United Hospitals, T.B. received an assignment to "work on" her "story telling".

31. T.B. stayed with the Weilers for approximately four months. She saw Mr. Van Every on one occasion prior to July 4, when the Van Everys had come to the Weiler home for dinner and a business discussion with Mr. Weiler. They were in the Weiler home for about four hours, and T.B. saw Mr. Van Every for a short time that evening on two different occasions.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction in this matter and the authority to take the action proposed pursuant to Minn. Stat. 245.801, subd. 4 and 14.50 (1984).

2. The Notice of and Order for hearing in this case was proper, and all relevant substantive and procedural requirements of law or rule have been fulfilled.

3. The County has advanced evidence establishing reasonable cause to believe that T.B. was molested by Licensee Stanley Van Every.

4. Minn. Stat. 245.801, subd. 4 (1984), provides that upon a demonstration by an agency that reasonable cause exists to take the action proposed with respect to a family foster care license, the burden of proof then shifts to the licensees to demonstrate compliance with the rule by a preponderance of the evidence; the Licensees have proved by a preponderance of the evidence that there is no substantial evidence that Stanley Van'Every committed an act of child molesting against T.B. on July 4, 1985.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services take no disciplinary action against the Family Foster Home license of Georgina and Stanley Van Every.

Dated this day of August, 1986.

RICHARD C. LUIS
Administrative Law Judge

NOTICE

Pursuant to Minn. sec. Stat. 14.62, subd. I ' the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped

MEMORANDUM

Minn. Rule 9545.0900A.(1) provides for adverse action against a family foster home license if there is substantial evidence that any person living in the household has committed an act of child molesting.

Minn. Stat. 609.345(b) provides that a person is guilty of criminal sexual conduct in the fourth degree if (s)he engages in sexual contact (a touching of the intimate part5of the body, or the clothing covering those intimate parts) with a person under age 16 and (s)he is more than four years old than the younger person. An affirmative defense to this crime exists if the older person be.lieves that the younger person was over 16, but Mr. Van Every (who was 39 at the time) offered no evidence that he did not know T.B.'s age (15) on July 4, 1985. Therefore, if T.B.'s account of the events on that night is true, the record contains substantial evidence that Stanley Van Every committed an act of child molesting that day.

However, the Administrative Law Judge does not believe T.B.'s account. Rather, he believes Stanley Van Every's testimony that he and T.B. drove counterclockwise around the triangular block, and nowhere else, and that he never touched her during the drive. He also believes that there was no "first" drive (to the store) taken by the Licensee and T.B. Even if there were, T.B. testified at the hearing that there was no physical contact on that drive, so the only act(s) of molestation had to have occurred on the drive looking for the other children.

The Licensees' burden in this case is to prove by a preponderance of the

evidence that the record contains no substantial evidence of child molesting.

Minn. Stat. 245.801, subd. 4. "Substantial evidence" is defined by Black's

Law Dictionary (5th Ed., 1979) as "Such evidence that a reasonable mind might

accept as adequate to support a conclusion". It is obvious that for any evidence to qualify as "substantial", it must be credible. Since the Administrative Law Judge believes that the Licensees have proven by a preponderance (greater weight) of the evidence that T.B.'s account of the

alleged sexual advances made against her by Licensee Stanley Van Every-is untrue, there is no substantial evidence establishing a violation of the Rule. Therefore, the Licensees have demonstrated, by a preponderance of the evidence, compliance with the Rule, and no disciplinary action should be taken against their license.

The testimony of T.B. and other witnesses for the County is inconsistent in a variety of significant details. In contrast, the Licensees established that Mr. Van Every was alone with T.B. for so short a time that he could not have driven around the block and met Erv Weiler and the children when he did if he had consumed time by parking the car and kissing and fondling T.B.

The amount of time consumed by Erv Weiler in walking from the Van Every garage to the Dale Street bridge, finding the children and walking half-way back on Topping from the bridge to the Van Every's was approximately five minutes.' That this was the route taken and time consumed by Mr. Weiler is, established not only through the testimony of himself, his wife, and Mr. Van Every, but also through portions of the testimony of T.B. and her friend, B.R. (who is one of the children found on the Dale Street bridge by Erv Weiler). The corroboration of Weiler's testimony by T.B. and B.R. is very significant, because they are witnesses who are adverse to the Licensees.

B.R.'s testimony established that there was heavy traffic in the area at the time. This is important because it implies that Mr. Van Every would have needed more time than ordinary to drive around the block, giving him even less time to stop and make advances toward T.B. B.R. also testified that the time it took to walk back to the Van Every's after being spotted by Mr. Weiler was two to five minutes, which is consistent with meeting Mr. Van Every and T.B. a very short time after being found by Weiler.

Further corroboration of the testimony by the Weilers and Mr. Van Every that it was five minutes between the time Mr. Weiler went looking for the children and the time T.B. and Mr. Van Every met them with Van Every's car comes from evidence that, in a reconstruction of the incident performed later

by Erv and Elaine Weiler, Erv repeated his walk and Elaine drove a car the other way around the block and the two met five minutes later at the same place Erv had meet Mr. Van Every and T.B. on the night of July 4. The Administrative Law Judge believes the testimony of the Weilers in this regard. In addition, the Judge, accompanied by counsel for the County (counsel for the Licensees was invited, but declined to attend), repeated this reconstruction on a subsequent site visit (see the June 27, 1986 letter to counsel from the Administrative Law Judge) and his observations on that occasion were not inconsistent with the conclusion that the meeting took place five minutes after Mr. Weiler left the garage.

The most likely place for Mr. Van Every to make the alleged advances on T.B. is on Topping Street as it runs northeast of Como Avenue. That area is non-residential, and contains a number of places to pull a car over and "make-out" for a short time. The area described in Finding 6 is seen as the closest place that the advances allegedly made against T.B. could have taken place. It is just off the Como-Topping intersection, and any spot directly on the triangular block was too busy with traffic and/or potential witnesses. The time involved in proceeding northeast on Topping (instead of turning left on Como), stopping, parking, engaging in the alleged molestation, returning to

Como Avenue and picking up the route described by Mr. Van Every in his testimony, makes it highly unlikely for Mr. Van Every and T.B. to have met up with the children and Erv Weiler when and where they did. And even T.B. testified that they met Weiler and the children in the area described by the other witnesses.

T.B.'s testimony about the drive with Mr. Van Every actually weakens her account, when weighed against the other evidence involving time and place. She testified that she drove with Mr. Van Every for "five to ten" minutes before he stopped the car and proceeded with his advances. She testified that he stopped the car on a "dark street," which means somewhere other than Topping (where there were witnesses from the party), Como or Dale (well-traveled, well-lit thoroughfares). She went on to say that Mr. Van Every then gave some reason for stopping, put his arm around her to ask if she was cold, leaned over and kissed her. She then moved away, and he kissed her on the lips and "french kissed" her. After (or during) the "french kissing" he allegedly felt her breasts. She testified that he then moved his hand toward her vaginal area, and she moved away from him again. After that, she alleges, a conversation took place between herself and Mr. Van Every, which consisted of her telling him that "This isn't right, this shouldn't be happening.", his reply of, "You don't look nervous, but I'll stop for now.", her statement of, "Let's get back, they'll wonder where we were at." and, his statement, "Don't tell, it's our secret. I'll come see you later at Elaine's.". This testimony has been written out to emphasize the Administrative Law Judge's reasoning that such an incident, if it happened, would have taken too much time for Mr. Van Every to have gotten back on the search route and still meet Erv Weiler where and when he did. Yet, T.B. further testified, that after Mr. Van Every began driving again, they met with Erv Weiler at the same location as testified to by the other witnesses.

Two of the professional persons involved in treatment of T.B. at the Adolescent Day Treatment Program of United Hospitals, therapist Paula Doll and Dr. Bart Main, both testified that they thought that T.B. was truthful when she related to them the alleged advances made by Mr. Van Every. For a variety of reasons, the Administrative Law Judge has concluded that their beliefs are erroneous. First, evidence regarding the events of July 4, 1985, as detailed in the preceding paragraphs, makes it apparent that T.B. fabricated the sexual advances. The activity simply could not have occurred in the time it had to have occurred, if she were telling the truth. Second, Doll and Main were told

in advance of seeing T.B. about this affair that T.B. had said that the events occurred. They were analyzing her from the perspective of mental health professionals who assessed T.B.'s story for the purpose of treating her, not for the sole purpose of finding out whether she was telling the truth. Dr. Main testified that while T.B.'s recitation of events struck him as consistent and believable, T.B. is a manipulative person and has been known to lie. In' this case, the Judge has concluded that she lied again.

A variety of circumstantial evidence in this case supports Mr. Van Every's version of the events. He is an American Indian who believes in the tenet of his people that men must not sexually disturb women during their menstrual periods, and he knew T.B. was in such a period on July 4, 1985. T.B. had reason to try to embarrass her foster parents, with whom her relations were strained, by accusing one of their friends of making a sexual advance on her. Mrs. Weiler had earlier caught T.B. in a lie, and T.B. never identified Mr.

Van Every until after Elaine Weiler accused her of flirting with Mr. Weiler (although she had told B.R. and people at United Hospitals she had been molested). In the past, T.B. has had episodes of rebellion against authority. Each time she told another person events that had taken place on July 4, 1985, her story seemed to get larger. In her hearing testimony, she

accused Mr. Van Every of slapping her rear, as the two got out of the car, after arriving at the Van Every's (an unbelievable accusation, considering the probable proximity of witnesses). She had earlier claimed that she and Mr.

Van Every rode together to the Speedy Mart store before driving off to, look for the children, but no one else testified to that assertion. Mr. Van Every had only one car, a large one, operating on the night in question, but T.B. testified that the first drive was in a small car, with bucket seats. She told Paula Doll that man had hugged her in the car on the first drive, but testified at the hearing that they only talked. Also, if it had happened that

Mr. Van Every had touched her earlier in the evening, and/or made suggestive advances at the party (as she had told others), it is inconsistent for T.B. to

,have driven off alone with him later if (as she testified) his sexual advances were unwelcome.

The inconsistencies apparent from the evidence in the record lead to the conclusion that T.B. was not being truthful in accusing Licensee Stanley Van Every of sexual advances. Therefore, it has been recommended that no adverse action be taken against the Family Foster Home license of Mr. and Mrs. Van Every.

R.C.L.